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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,902	02/27/2004	Michael P. Spertus	5760-20100	9301
35690	7590	08/09/2007		
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL, P.C. P.O. BOX 398 AUSTIN, TX 78767-0398			EXAMINER VERDI, KIMBLEANN C	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 08/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/789,902

Applicant(s)

SPERTUS ET AL.

Examiner

Kacy Verdi

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on February 27, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date May 12, 2005.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

This office action is in response to the Application filed on February 27, 2004. Claims 1-28 are pending in the current application.

#### *Drawings*

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- a. Communications Bus 205, Figure 2, disclosed on page 11, line 4, paragraph [0036]; and
- b. Communications Bus 207, Figure 2, disclosed on page 11, line 4, paragraph [0037].

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 330a, 330b, 332a, 332b, 334a, 334b, 336a, 336b, 338a, and 338b of Figure

1. Though the specification discusses components 330 (Endpoint (Application Server)), 332 (Runtime Agent), 334 (Host Collector), 336 (Listener), and 338 (Forensics) it does not expressly disclose components 330a-b, 332a-b, 334a-b, 336a-b, and 338a-b.

3. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being

Art Unit: 2194

amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The use of the trademark JAVA™ has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 9-13 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 9-13, the "carrier medium," in accordance with Applicant's specification, may be signals such as electrical, electromagnetic, or digital signals. This subject matter is not limited to that which falls within a statutory category of invention because it is not limited to a process, machine, manufacture, or a composition of matter. Instead, it includes a form of energy. Energy does not fall within a statutory category since it is clearly not a series of steps or acts to constitute a process, not a mechanical

Art Unit: 2194

device or combination of mechanical devices to constitute a machine, not a tangible physical article or object which is some form of matter to be a product and constitute a manufacture, and not a composition of two or more substances to constitute a composition of matter.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by United States Patent 6,748, 555 B1 to Teegan et al (hereinafter Teegan).

9. As to claim 1, Teegan teaches a method for use in a distributed management framework comprising a plurality of applications, wherein each of the plurality of applications is configured to make function calls to standard programming functions, the method comprising:

intercepting the function calls to the standard programming functions made by the plurality of applications (Fig. 3, col. 10, lines 2-5, step 406, Fig. 6, col. 12, lines 38-39);

routing the function calls to alternative implementations of the standard programming functions (col. 10, lines 5-6, steps 406-410, Fig., 6, col. 12, lines 39-42);

using the alternative implementations of the standard programming functions to collect availability metrics for the plurality of applications (steps 420-424, Fig. 7, col. 12, lines 51-56).

10. As to claim 2, Teegan teaches the method of claim 1, wherein the standard programming functions comprise memory functions (col. 15, lines 4-7).

11. As to claim 3, Teegan teaches the method of claim 1, wherein the intercepting the function calls comprises intercepting the function calls in a production environment (col. 19, lines 24-26).

12. As to claim 4, Teegan teaches the method of claim 1, further comprising:

inserting agents into the plurality of applications at application launch (step 906, Fig. 16, col. 26, lines 39-45);

wherein the agents are configured to perform the intercepting the function calls to the standard programming functions (col. 26, lines 48-51, step 910; Fig. 16).

13. As to claim 5, Teegan teaches the method of claim 1, further comprising:

modifying program code of at least one of the applications to enable the intercepting the function calls to the standard programming functions (col. 3, lines 19-23).

14. As to claim 6, Teegan teaches the method of claim 1, further comprising:

using the availability metrics for performance management of the plurality of applications in the distributed management framework (col. 15, lines 49-67 and col. 16, lines 1-5).

15. As to claim 7, Teegan teaches the method of claim 1, further comprising:

configuring the distributed management framework to monitor a subset of the plurality of applications (col. 11, lines 12-14, and col. 16, lines 6-9, col. 26).

16. As to claim 8, Teegan teaches the method of claim 1, further comprising:

aggregating the availability metrics for the plurality of applications at a console for performance management (Fig. 11, col. 15, lines 50-55).

17. As to claim 9, this claim is rejected for the same reasons as claim 1, see the rejection to claim 1 above.

18. As to claims 10-12, these claims are rejected for the same reasons as claims 3-5 respectively, see the rejections to claims 3-5 above.

19. As to claim 13, this claim is rejected for the same reasons as claim 8, see the rejection to claim 8 above.

20. As to claim 14, this claim is rejected for the same reasons as claim 1, see the rejection to claim 1 above.

21. As to claims 15-17, these claims are rejected for the same reasons as claims 3-5 respectively, see the rejections to claims 3-5 above.

22. As to claim 18, this claim is rejected for the same reasons as claim 8, see the rejection to claim 8 above.

23. As to claim 19, this claim is rejected for the same reasons as claim 1, see the rejection to claim 1 above.

24. As to claim 20, Teegan teaches a method for use in a distributed management framework comprising a plurality of applications, the method comprising:

Art Unit: 2194

starting a manager thread inside each of the plurality of applications (step 906, Fig. 16, col. 26, lines 39-45); and

using the manager threads to monitor execution of the plurality of applications in a production environment (col. 10, lines 1-17, Fig. 3).

25. As to claim 21, Teegan teaches the method of claim 20, wherein the plurality of applications comprises a first application (col. 12, lines 2-5), and wherein the using the manager threads to monitor execution of the plurality of applications comprises using the manager thread in the first application to determine that the first application is hung (col. 12, lines 19-22).

26. As to claim 22, Teegan teaches the method of claim 20, further comprising:  
collecting availability metrics for the plurality of applications using internal monitoring of the plurality of applications (steps 420-424, Fig. 7, col. 12, lines 51-56);  
and

using the manager threads to trigger output of the availability metrics to an external recipient (step 408, Fig. 6, col. 12, lines 52-62).

27. As to claim 23, Teegan teaches a method for use in a distributed management framework comprising a plurality of applications, wherein the plurality of applications comprise at least one monitored application, the method comprising:

modifying program code of the monitored application to include additional instructions (col. 3, lines 19-23);



using the additional instructions in the monitored application to monitor execution of the monitored application in a production environment (col. 12, lines 23-25, Fig. 5 and col. 19, lines 24-26); and

automatically generating output in response to a triggering event in the execution of the monitored application (step 408, Fig. 6, col. 12, lines 52-62), wherein the output comprises an execution history for the monitored application (col. 3, lines 56-57).

28. As to claim 24, Teegan teaches the method of claim 23, wherein the using the additional instructions in the monitored application to monitor execution of the monitored application comprises recording an execution trace of the execution of the monitored application on a per-thread basis (col. 3, lines 56-57 and col. 4, lines 23-24).

29. As to claim 25, Teegan teaches the method of claim 23, wherein the using the additional instructions in the monitored application to monitor execution of the monitored application comprises recording entries to and exits from function calls during execution of the monitored application (col. 12, lines 38-40, 46-51, and col. 17, lines 29-36).

30. As to claim 26, Teegan teaches the method of claim 23, wherein the using the additional instructions in the monitored application to monitor execution of the monitored application comprises capturing exceptional control transfers during execution of the monitored application (col. 18, lines 6-11).

31. As to claim 27, Teegan teaches the method of claim 23, wherein the using the additional instructions in the monitored application to monitor execution of the monitored application comprises tracking creation of data objects during execution of the monitored application (col. 18, lines 6-11).

Art Unit: 2194

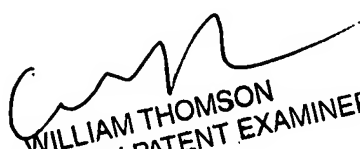
32. As to claim 28, Teegan teaches the method of claim 27, wherein the using the additional instructions in the monitored application to monitor execution of the monitored application comprises recording metrics for the creation of data objects (col. 19, lines 65-67 and col. 20, lines 1-3).

***Conclusion***

33. The prior art made of record on the accompanying PTO-892 and not relied upon, is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kacy Verdi whose telephone number is (571) 270-1654. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

  
WILLIAM THOMSON  
SUPERVISORY PATENT EXAMINER

Art Unit: 2194

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

August 3, 2007  
KV